

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 MAR 31 P 3:01

DISTRICT OF UTAH

BRETT DOUGLAS ROBBINS,

Plaintiff,

vs.

LOWE'S COMPANIES INC. and LIBERTY
LIFE ASSURANCE COMPANY OF
BOSTON,

Defendants.

BY: _____
DEPUTY CLERK

ORDER ADOPTING REPORT
AND RECOMMENDATION

Case No. 1:04 CV 95 TC

This case was referred to United States Chief Magistrate Judge Samuel Alba pursuant to 28 U.S.C. § 636(b)(1)(B) and involves Plaintiff's challenge of his denial of benefits under 29 U.S.C. § 1132(a) (1) (B). Before the court is Defendants' Motion for Summary Judgment

Judge Alba issued his Report and Recommendation ("R&R") on February 28, 2006, finding: (1) that no genuine issue of material fact exists in the case; (2) that Liberty Life's decision to deny Plaintiff's appeal of his denial of disability benefits was not arbitrary and capricious; (3) that Liberty Life has shown that its interpretation of the documents that govern the Lowe's Long Term Disability Plan was reasonable; and (3) that Liberty Life has shown that its application of those terms is supported by substantial evidence. Accordingly, Judge Alba recommended that Defendants' Motion for Summary Judgment be GRANTED.

The parties were given ten days from the date of the issuance of the R&R to file objections, and were cautioned that failure to file an objection could constitute a waiver of those objections on subsequent appellate review. Neither party filed an objection to the R&R, although the Plaintiff contacted the court after the expiration of the ten-day period indicating he would be filing an objection.¹ However, as of the date of this Order, the court has not received an objection by the Plaintiff.

The court finds that Judge Alba's R&R is correct in all material respects. Accordingly, the R&R is adopted as the order of this court. The Defendants' Motion for Summary Judgment is GRANTED and this case is DISMISSED.

DATED this 31st day of March, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

¹Before indicating his interest in filing such an objection, Plaintiff, on March 6, 2006, filed a motion entitled "Change of Address & Motion for Judgment." The purpose of this motion was apparently to inform the court of his new mailing address and to express his willingness to participate in any additional hearings that the court might deem necessary. It appears that Plaintiff had yet to receive a copy of Judge Alba's ruling at the time he filed the Motion for Judgment. Because Judge Alba had already issued his report and recommendation at the time Plaintiff filed the motion, the court DENIES Plaintiff's Change of Address & Motion for Judgment as moot.